85-760

Supreme Court, U.S.
FILED
OCT 29 1985
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

1985-86 TERM

JOSEPH THOMAS HAFNER,

Petitioner,

vs.

STATE OF ALABAMA,

Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALABAMA
Case No. 83-92
First Division No. 956

PETITION FOR WRIT OF CERTIORARI

THOMAS M. HAAS
JAMES M. BYRD
Attorneys for Petitioner
255 St. Francis St.
Mobile, Alabama 36602
1-205-432-0457

QUESTIONS PRESENTED FOR REVIEW

Did the Alabama Legislature violate the due process of law clause of the Fourteenth Amendment of the United States Constitution by enacting a minimum three (3) year mandatory imprisonment without possibility of parole and no maximum penalty criminal statute that is vague, indefinite and uncertain due to its failure to limit, define or even describe the substance, material or item, the possession of which is prohibited?

Did the Alabama Legislature violate the equal protection clause of the United States Constitution by enacting a minimum three (3) year mandatory imprisonment without possibility of parole and no maximum penalty criminal statute under which the imposition of sentence cannot be suspended, deferred or withheld unless

the prosecuting attorney decides the defendant provided substantial assistance in the identification, arrest, or conviction of defendant's accomplices, accessories, co-conspirators, or principals when the Alabama Code elsewhere provides a defendant who is sentenced to ten (10) years or less imprisonment has the right to request probation and the granting of probation is in the sole discretion of the trial court?

Was the warrantless stop of Petitioner and seizure of a container from Petitioner's vehicle and subsequent warrantless search of said container without probable cause and without exigent circumstances a violation of Petitioner's Fourth Amendment to the United States Constitution right to be free from unreasonable search and seizure?

LIST OF PARTIES

The parties to this proceeding are Joseph Thomas Hafner, Petitioner, and the State of Alabama.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW....	i.
LIST OF PARTIES.....	iii.
TABLE OF CONTENTS.....	iv.
TABLE OF AUTHORITIES.....	v.
REFERENCE TO REPORTS OF OPINIONS DELIVERED IN COURTS BELOW ...	1.
GROUNDS INVOKING JURISDICTION.....	1.
CONSTITUTIONAL PROVISIONS AND STATUTES	2.
STATEMENT OF THE CASE.....	6.
BASIS FOR FEDERAL JURISDICTION....	6,7
ARGUMENT	11
CERTIFICATE OF SERVICE	25
APPENDIX.....	26

TABLE OF AUTHORITIES

CASE LAW:	PAGE
Boyce Motor Lines v. United States, 342 U.S. 337, 340, 72 S.Ct. 329, 330, 96 L.Ed. 367, 371 (1951).....	11
Chambers v. Maroney, 399 U.S. 42, 26 L.Ed2d 419, 90 S.Ct. 1975 (1970).....	20
Coolidge v. New Hampshire, 29 L.Ed2d 564, 576, 403 U.S. 443, 91 S.Ct. 2022 (1971)....	20, 21
Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed2d 222, 227-28 (1972).....	12
Illinois v. Gates, ___ U.S. ___, 76 L.Ed2d 527, 103 S.Ct. ___ (1983).....	17
Oyler v. Boyles, 368 U.S. 448, 456, 7 L.Ed2d 446, 82 S.Ct. 501 (1962).....	14
United States v. Batchelder, 442 U.S. 114, 125, 99 S.Ct. 298, 60 L.Ed2d 755, 766 (1979).....	14

TABLE OF AUTHORITIES
continued

PAGE

United States v. National Dairy Products Corporation, 372 U.S. ___, 33, 83 S.Ct. ___, 598, 9 L.Ed2d ___, 566...12

CONSTITUTIONAL PROVISIONS:

U.S. CONST. amend. IV..... 2

U.S. CONST. amend. XIV..... 2

STATUTES:

Code of Alabama (1975) § 12-11-30.. 6

Code of Alabama (1975) § 15-22-50.. 4,13

Code of Alabama (1975) § 20-2-2(15) 5,12

Code of Alabama (1975) § 20-2-70...12

Code of Alabama (1975) § 20-2-80(1) 3

Code of Alabama (1975) § 20-2-81... 3

28 U.S.C. § 1257(3)..... 1

REFERENCE TO REPORTS OF OPINIONS DELIVERED IN COURTS BELOW

The conviction of Petitioner in the Circuit Court of Baldwin County, Alabama, was affirmed by the Court of Criminal Appeals without opinion on April 23, 1985; Application for Rehearing was overruled without opinion on July 2, 1985; and Petition for Writ of Certiorari to the Supreme Court of Alabama was denied without opinion on August 30, 1985.

GROUNDS INVOKING JURISDICTION

The statutory provision which confers jurisdiction to review the judgment or decree in question by writ of certiorari is 28 U.S.C. § 1257(3), which permits review by the Supreme Court of the United States by writ of certiorari of the judgment of the highest court of a state where any right, privilege or immunity

is specially set up or claimed under the Constitution, treaties or statutes of the United States.

CONSTITUTIONAL PROVISIONS AND STATUTES

I. AMENDMENT FOUR TO THE UNITED STATES CONSTITUTION

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

II. AMENDMENT FOURTEEN TO THE UNITED STATES CONSTITUTION

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of its laws."

III. CODE OF ALABAMA (1975)

A. § 20-2-80(1).

"Except as authorized in Chapter 2, Title 20:

1. Any person who knowingly sells, manufactures, delivers, or brings into this State, or who is knowingly in actual or constructive possession of, in excess of 1 kilo or 2.2 pounds of cannabis is guilty of a felony, which felony shall be known as 'trafficking in cannabis.' If the quantity of cannabis involved:

   a. Is in excess of 1 kilo or 2.2 pounds, but less than 2,000 pounds, such person shall be sentenced to a mandatory minimum term of imprisonment of three (3) calendar years and to pay a fine of $25,000.00."

B. §20-2-81.

"(a) Notwithstanding the provisions of Chapter 22, Title 15, with respect to any person who is found to have violated this article, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving a mandatory minimum term of imprisonment prescribed by this article.

"(b) The prosecuting attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this article and who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard en camera. The judge hearing the motion may reduce or suspend the sentence if he finds that the defendant rendered such substantial assistance."

C. § 15-22-50.

"Circuit Courts and District Courts subject to the provisions and conditions hereinafter provided, may suspend execution of sentence and place on probation any person convicted of a crime in any court exercising criminal jurisdiction. The court shall have no power to suspend the execution of sentence imposed upon any person who has been found guilty and whose punishment is fixed at death or imprisonment in the penitentiary for more than ten (10) years. Except as provided in the preceding sentence, the court, after a plea of guilty, after the returning of a verdict of guilty by the jury or after the entry of a judgment of guilt by the court, may suspend execution of sentence and place the

defendant on probation, or may impose a fine within the limits fixed by law and also place the defendant on probation."

D. §20-2-2(15).

"MARIHUANA. All parts of the plant Cannabis sativa L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. Such term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake or the sterilized seed of the plant which is incapable of germination."

STATEMENT OF THE CASE

Indictment charged:

> "Joseph Thomas Hafner whose name is otherwise unknown to the Grand Jury other than as stated, did knowingly sell, manufacture, deliver, or bring into this state, or did knowingly possess, in excess of 2.2 pounds of marihuana, in violation of Title 20-2-80 of the Code of Alabama, against the peace and dignity of the State of Alabama."

§ 12-11-30, Code of Alabama (1975), confers exclusive original jurisdiction of all felony prosecutions in the Circuit Court in the district wherein the alleged offense occurred.

The federal questions sought to be reviewed by this petition were first raised in Petitioner's motion to dismiss the indictment and motion to suppress which were filed in the Circuit Court of Baldwin County, Alabama, prior to trial of your Petitioner. Said motion to dismiss the indictment was denied by the

trial court and said motion to suppress was heard during trial and denied by the trial court and, after non-jury trial in the Circuit Court of Baldwin County, Alabama, wherein Petitioner was adjudged guilty, Petitioner was sentenced to twelve (12) years imprisonment and fined $25,000.00.

The Court of Criminal Appeals of Alabama affirmed Petitioner's conviction without opinion on April 23, 1985, and on July 2nd, 1985 said court, without opinion, overruled Petitioner's Application for Rehearing with Correct Statement of Facts.

Petitioner filed Petition for Writ of Certiorari to the Supreme Court of Alabama, with Correct Statement of Facts, which was denied without opinion on August 30, 1985.

At trial of this cause Loxley,

Alabama Chief of Police, Condie Langham testified that an unidentified person of unknown reliability telephoned him and advised him that a man and woman just came to a trailer from the Atmore area with marijuana in whiskey cartons to be sold. Chief Langham testified that in a second call the unknown individual of unknown reliability advised him that the marijuana was in egg cartons approximately twelve inches square, and that a white male in a small white or light colored pick-up truck would be at the trailer the afternoon of the next day to purchase some marijuana.

Baldwin County Deputy Sheriff Thomas H. Nunley testified he arrived at the scene where petitioner's vehicle had been stopped and he placed Petitioner under arrest. Thereafter he removed an egg crate from the rear of Petitioner's

truck even though, according to Chief Condie Langham, the egg carton was not of the size given by the unknown individual of unknown reliability. Officer Nunley then opened the sealed box and observed green plant material later determined to be marijuana. Officer Nunley testified no effort was made to obtain a search warrant for the trailer during the 48 hour interval between the time of the first call advising the police of the marijuana in the trailer, and no effort was made to obtain a search warrant for the trailer or the white or light colored pick-up truck during the 24 hour interval between the time of the call advising of the proposed purchase of marijuana and the actual purchase:

> "because our confidential informant was not, as far as I was concerned, was not reliable, because we had not used the informant before."

Officer Nunley, as had Chief Langham and as did Officer Lance Monley, Baldwin County Deputy Sheriff who maintained surveillance on the trailer, for the 24 hours from the afternoon of the second call until the afternoon of the arrival of the white or light colored pick-up truck, testified that no egg carton was seen in Petitioner's truck until after Petitioner had been stopped, ordered out of his vehicle and placed under arrest.

The trial court denied Petitioner's Motion to Suppress the evidence due to the unconstitutionality of the search and seizure of his vehicle and, after overruling Petitioner's objection to the introduction of the evidence and renewal of his Motion to Suppress,

admitted into evidence the marijuana seized from the container in Petitioner's vehicle.

ARGUMENT

I.

The Alabama Legislature enacted a criminal statute with severe penalties with the ultimate question of fact being a term, i.e. cannabis, that was not and had not been defined or used before. A vague statute does not give adequate "notice of the required conduct to one who would avoid its penalties," Boyce

Motor Lines v. United States, 342 U.S. 337, 340, 72 S.Ct. 329, 330, 96 L.Ed. 367, 371 (1951), is not "sufficiently focused to forewarn of both its reach and coverage," United States v. National Dairy Products Corporation, 372 U.S. ____, 33, 83 S.Ct. ____, 589, 9 L.Ed.2d ____, 566, and "may trap the innocent by not providing fair warning." Grayned v. City of Rockford, 408 U.S. 104, 108, 92 S.Ct. 2294, 2298, 33 L.Ed.2d 222, 227-28 (1972). Elsewhere in earlier criminal statutes the Alabama Legislature had prohibited the possession and sale of marijuana and had by separate criminal statute expressly defined the term marijuana at law. See § 20-2-70, Code of Alabama (1975), § 20-2-2(15), Code of Alabama (1975). In the trafficking in cannabis statute, however, there is no definition of the term cannabis, and there is no reference nor

is there any definition of cannabis as used in said trafficking statute found anywhere in the Alabama Code. Therefore, the trafficking in cannabis statute when it left the legislature was not complete in all its terms and is not definite and certain enough to enable every person, by reading the statute itself, to know what his rights and obligations are and to know how the trafficking in cannabis statute will operate when executed.

II.

Under § 15-22-50, Code of Alabama (1975), any person in the State of Alabama sentenced to imprisonment for a term of ten (10) years or less has the right to request the Court suspend, defer or withhold execution of said sentence and place him on probation. The trafficking in cannabis article, however, removes the right to request probation from defendants

convicted thereunder and places the privilege to request probation in the unbridled, uncontrolled, and subjective discretion of the district attorney. In addition, the trafficking in cannabis article requires defendants to earn the right to request probation by performing acts not required of any other criminal defendant in the State of Alabama.

This Honorable Court held in United States v. Batchelder, 442 U.S. 114, 125, 99 S.Ct. 298, 60 L.Ed2d 755, 766 (1979):

> "Selectivity in the enforcement of criminal law is, of course, subject to constitutional constraints.[9] , ...(9) The equal protection clause prohibits selective enforcement 'based upon an unjustifiable standard such as race, religion, or other arbitrary classification.' Oyler v. Boyles, 368 U.S. 448, 456, 7 L.Ed.2d 446, 82 S.Ct. 501 (1962)."

The Alabama trafficking in cannabis statute and the punishment provisions thereof violate the equal protection clause of

the United State Constitution by authorizing selective enforcement and selectivity in the enforcement of the punishment provision.

Denial of the right to request probation when sentenced to ten (10) years or less imprisonment solely because a defendant has been convicted of possession of in excess of 2.2 pounds of cannabis is selective enforcement based upon an arbitrary classification. A murderer, rapist, robber, or possessor of less than 2.2 pounds of cannabis who is sentenced to ten (10) years or less automatically has the right to request the court suspend, defer or withhold execution of his sentence, and the denial of this right to request probation solely because a defendant possessed in excess of 2.2 pounds of cannabis is selective enforcement based upon an unjustifiable

standard.

The second violation of the equal protection clause is in the provision of the sentencing statute which provides that, regardless of this mandatory minimum imprisonment without parole, if the district attorney is satisfied that the defendant provided substantial assistance, he may move the court to defer, suspend or withhold sentencing, This clearly authorizes the unbridled, unfettered, uncontrolled, and subjective selectivity in the enforcement of a criminal law to the district attorney. Requiring the prosecutor to move for probation based upon his own unbridled, uncontrolled, and subjective judgment of substantial assistance before the court can examine the assistance and consider the probation is an absolute bar to review of the prosecutor's subjective judgment and selectivity in the enforcement of the

criminal law. Therefore, the sentencing provision of the Alabama trafficking in cannabis statute clearly violates the equal protection clause of the United States Constitution.

III.

Illinois v. Gates, __U.S. __, 76 L.Ed2d 527, 103 S.Ct. __(1983), although dealing with search under warrant issued on the basis of a partially corroborated anonymous informant's tip, held that a totality of the circumstances examination with the informant's "varacity," "reliability" and "basis of knowledge" as factors should be employed to determine the existence of probable cause. An examination of the totality of the circumstances reveals that under the facts of this case, the police officers never had probable cause to stop petitioner's vehicle and certainly the totality of

the circumstances establishes the existence of no probable cause for the seizure of the egg carton from Petitioner's vehicle and the subsequent search thereof.

At the instant before Petitioner was seized, the police officers had self-contradictory information from an unknown individual of unknown "varacity," "reliability," and "basis of knowledge." The anonymous individual's information that "a white male in a small white or light colored pick-up truck would be at the trailer the next afternoon" was the only portion of the information that was even partially corroborated immediately before Petitioner's seizure. Clearly this "corroboration" does not give rise to the belief that any criminal activity was afoot and wholly insufficient under a totality of the circumstances examination to establish probable cause for

believing the self-contradictory information from an anonymous individual of unknown reliability.

Immediately after Petitioner was seized, as an additional circumstance to be added to the totality of the circumstances examination, the police officers observed that the egg carton in Petitioner's vehicle was not of the size the anonymous individual of unknown reliability had stated contained marijuana. Therefore, even if this Court is of the opinion the police officers had sufficient circumstances under which seizure of Petitioner was lawful, as soon as the officers observed a fact that contradicted the information from the unknown individual of unknown reliability, the police officers had no probable cause to proceed further and search the container in Petitioner's vehicle.

> "Thus the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specially established and well-delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be a 'showing by those who seek exemption...that the exigencies of the situation made that course imperative.' '(T)he burden is on those seeking the exemption to show the need for it.'" Coolidge v. New Hampshire, 29 L.Ed2d 564, 576, 403 U.S. 443, 91 S.Ct. 2022 (1971).

The one exception to the warrant requirement that even remotely applies to the facts of this case is 'probable cause coupled with exigent circumstances.' See Chambers v. Maroney, 399 U.S. 42, 26 L.Ed2d 419, 90 S.Ct. 1975 (1970); Coolidge, supra. In Coolidge, at 579, this Honorable Court held that:

> "'exigent circumstances' justify the warrantless search of 'an automobile stopped on the highway,' where there is probable cause, because the car is 'move-

> able, the occupants are alerted, and the car's contents may never be found again if a warrant must be obtained.' (T)he opportunity to search is fleeting..."

But as this court further held in Coolidge, at 592-593:

> "Here, as in Trupino, the determining factors are advance police knowledge of the existence and location of the evidence, police intention to seize it, and the ample opportunity for obtaining a warrant. (cite omitted)... We are convinced that the result reached in this case is correct, and that the principle it reflects - that the police must obtain a warrant when they intend to seize an object outside the scope of a valid search incident to arrest - can be easily understood and applied by the Courts and law enforcement officers alike."

In the case at bar today, the police officers had advance knowledge of the existence and location of the evidence. The police had information from an unknown informant of unknown reliability of the presence of the evidence in the trailer for over 48 hours and had over

24 hours advance knowledge of the evidence to be in Petitioner's truck. For over 24 hours prior to Appellant's seizure and the search of the contents of the container in his vehicle, the police had the intention to seize Petitioner and the container and search the container as is evidenced by the fact that surveillance was set up 24 hours in advance, police cars were manned and ready to follow Petitioner and stop his vehicle, and immediately upon stopping Petitioner's vehicle, the police officer went straight to the egg carton container, seized it and searched it. The police officers also had ample opportunity for obtaining a warrant but during the over 48 hour period after receiving the information about the presence of marijuana in the trailer, before seizing Petitioner and searching the container in his truck, and

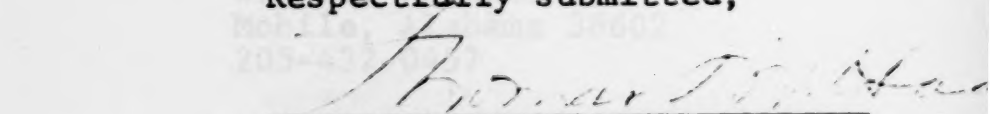
during the over 24 hour period after receiving the information about the marijuana to be in a white or light colored pick-up truck before the seizure of Petitioner and the search of the container in his pick-up truck, absolutely no effort was made by any police officer to obtain a warrant from any judge or magistrate. The only explanation given by the police for their failure to obtain prior approval by a judge or magistrate, was:

> "Because our confidential informant was not, as far as I was concerned, was not reliable, because we had not used the informant before."

Under the facts testified to by the officers whose burden it is to show that the exigencies of the situation made the warrantless search course imperative, clearly established that no probable cause existed, and under a totality of the

circumstances view certainly prove that no probable cause coupled with exigent circumstances ever existed. The opportunity to search was not fleeting because the officers had anywhere from between 24 and 48 hours advance notice of the need for a warrant and, in addition, no claim can be made that it was not practicable for the officers to secure a warrant during the 24 to 48 hours before stopping Petitioner's vehicle, seizing a container from Petitioner's vehicle and conducting the warrantless search of said container. Therefore, the warrantless search is per se unreasonable and under the Fourth Amendment of the United States Constitution the evidence obtained therefrom was due to be suppressed.

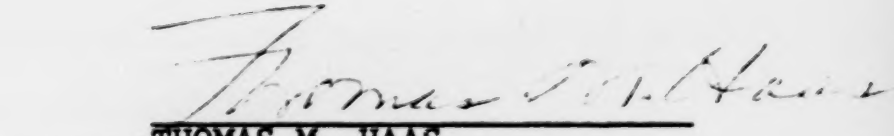
Respectfully submitted,



THOMAS M. HAAS, Attorney for Petitioner

CERTIFICATE OF SERVICE

I, Thomas M. Haas, a member of the Bar of the Supreme Court of the United States, do hereby certify that I have served three (3) copies of this Petition for Writ of Certiorari on the Honorable Charles A. Graddick, Attorney General of the State of Alabama, by depositing same in the United States Mail, properly addressed and first class postage pre-paid on this the 29 day of October, 1985.



THOMAS M. HAAS
Attorney for Petitioner

255 St. Francis St.
Mobile, Alabama 36602
205-432-0457

APPENDIX

MOTION TO DISMISS INDICTMENT, DENIED

3/31/83; COMES THE STATE OF ALABAMA BY ITS DISTRICT ATTORNEY, COMES THE DEFENDANT ALSO IN HIS OWN PROPER PERSON AND BY HIS ATTORNEY, AND SUBMITTED TO THE COURT THE DEFENDANT'S MOTION TO DISMISS INDICTMENT FILED IN THIS CAUSE ON THE 10th DAY OF FEBRUARY, 1983, AND THE COURT HAVING HEARD ARGUMENT OF COUNSEL ON SAID MOTION, AND CONSIDERED AND UNDERSTOOD THE SAME, IS OF THE OPINION THAT THE SAME IS NOT WELL TAKEN AND SHOULD BE OVERRULED: IT IS THEREFORE ORDERED AND ADJUDGED BY THE COURT THAT SAID MOTION TO DISMISS INDICTMENT BE AND THE SAME HEREBY IS OVERRULED AND DENIED.

AMENDED MOTION TO DISMISS INDICTMENT, DENIED

3/31/83; COMES THE STATE OF ALABAMA BY ITS DISTRICT ATTORNEY, COMES THE DEFENDANT ALSO IN HIS OWN PROPER PERSON AND BY HIS ATTORNEY, AND SUBMITTED TO THE COURT THE DEFENDANT'S AMENDED MOTION TO DISMISS INDICTMENT FILED IN THIS CAUSE ON THE 31st DAY MARCH, 1983, AND THE COURT HAVING HEARD ARGUMENT OF COUNSEL ON SAID MOTION, AND CONSIDERED AND UNDERSTOOD THE SAME, IS OF THE OPINION THAT THE SAME IS NOT WELL TAKEN AND SHOULD BE OVERRULED: IT IS THEREFORE ORDERED AND ADJUDGED BY THE COURT THAT SAID AMENDED MOTION TO DISMISS INDICTMENT BE AND THE SAME HEREBY IS OVERRULED AND DENIED.

JUDGMENT

9/27/84; This day in open Court came the State of Alabama by its District Attorney, and the defendant in his own proper person and with his attorney, and the defendant in open court on this day on Indictment for the offense of Trafficking in Cannibis, and the trial of this case having been regularly set for this day and trial by jury having been waived by defendant, this case is tried by the Court without the intervention of a jury, and the Court after hearing the evidence taken ore tenus, renders judgment finding the defendant guilty of Trafficking in Cannibis, as charged in the Indictment. Pre-sentence investigation ordered.

SENTENCING

11/29/84; Came the State of Alabama by its District Attorney, came the Defendant also in his own proper person and by his attorney, and defendant having been found guilty of the offense of Trafficking in Cannibis, and adjudged guilty of the offense of Trafficking in Cannibis, being asked by the Court if he had anything to say why the judgment and sentence of the law should not be passed upon him, replied by his attorney, "Judge, we would just point to the presentence investigation--things in there, and the fact that this man has not been in trouble before and has a good reputation. And we would ask the Court to take that into consideration." It is therefore considered and adjudged by the Court that the Defendant is guilty of the offense of Trafficking in Cannibis, as charged in the Indictment in this case

and that the Defendant be and he is hereby sentenced to Twelve (12) years in the State Penitentiary and a fine of $25,000.00. Defendant's appeal bond set at $25,000.00.

THE ALABAMA COURT OF CRIMINAL APPEALS

Montgomery, Alabama

RE: CC 83-92

1st Div. 956 Baldwin Circuit Court

JOSEPH THOMAS HAFNER
Appellant

vs.

THE STATE
Appellee

Dear Sir: This is to advise you that on APR 23 1985 the Court of Criminal Appeals announced decision of:

affirmance)
) No opinion

in the above stated cause.

Yours truly,

MOLLIE JORDAN, CLERK

COURT OF CRIMINAL APPEALS
State of Alabama

1st Div. 956 Baldwin Circuit Court
CC83-92

JOSEPH THOMAS HAFNER

Appellant

vs.

STATE OF ALABAMA

Appellee

You are hereby notified that on July 2, 1985 the following indicated action was taken in the above-styled cause by the Court of Criminal Appeals of Alabama:

XXX Application for rehearing overruled. No opinion. Judgement not final, see Rule 41, A.R.A.P.

XXX Rule 39(k) motion denied.

original signed
CLERK Mollie Jordan
COURT OF CRIMINAL APPEALS
OF ALABAMA

THE STATE OF ALABAMA -JUDICIAL DEPARTMENT

IN THE SUPREME COURT OF ALABAMA

August 30, 1985

84-1084

EX PARTE: JOSEPH THOMAS HAFNER

PETITION FOR WRIT OF CERTIORARI

(RE: Joseph Thomas Hafner v. State)

CRIMINAL APPEALS 9/956

CERTIFICATE OF JUDGMENT
WRIT DENIED

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari be denied.

Costs taxed to petitioner.

TORBERT, CJ. - FAULKNER, ALMON, EMBRY & ADAMS, JJ., CONCUR.

I, Robert G. Esdale, as Clerk of the Supreme Court of Alabama do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same arreas(s) of record in said Court.

Witness my hand this 30th day of Aug. 85.

original signed
Clerk, Supreme Court of Alabama